

Hon. Timothy W Dore
In Proceedings Under
Chapter 7
Hearing Date: January 6, 2017
Time: 9:30 AM
Response Date: December 30, 2016
Location: 700 Stewart Street, Seattle,
WA 98101
Room: 8106

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON

In re

Scott Banchero,

Debtor(s),

Case No: 11-12340 TWD

MOTION SEEKING RELIEF FROM STAY
AND COMPEL ABANDONMENT OF
REAL PROPERTY

I. Introduction

Mel Foster and Virginia Foster, (“Fosters”), move the Court for an order terminating the automatic stay pursuant to 11 U.S.C. § 362(d)(2), and order the abandonment of real property pursuant to 11 U.S.C. § 554(b) thereby allowing Fosters to proceed with any and all contractual and statutory remedies incident to the interest held by virtue of a Joint Venture Agreement and the subsequent execution of a Quit Claim Deed described below and attached as exhibits to Fosters’ declaration for the real property commonly described as 913 23rd Ave S, Seattle, Washington (“Property”).

II. Parties in Interest and Background

On January 18, 2008, The Debtor and the Fosters entered into a “Joint Real Estate Venture and Agreement” (“Joint Venture Agreement”) wherein the Debtor agreed to purchase and finance a house located at 913 23rd Ave. S., Seattle, Washington (“Property”) and the Fosters agreed to live in the Property and pay the mortgage and minor maintenance costs out of

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1 their income and both parties agreed to evenly split the larger costs of the Property.
2 Subsequently, The Debtor filed a Chapter 11 bankruptcy on March 3, 2011, and confirmed a
3 Chapter 11 plan [Docket No. 207-1] ("Confirmed Plan") on May 31, 2012 [Docket No. 207]
4 which provided that the Debtor would "honor and leave unaltered" the Joint Venture
5 agreement. *See Order Denying the Fosters' Motion to Partition, Enforce the Joint Venture*
6 *Agreement with the Debtor, and Dismiss this Case* [Docket No. 233].

7 **III. Debtor's Interest in the Property**

8 Debtor's entire interest in the Property was conveyed to Virginia Foster via Quit Claim
9 Deed ("QCD") on January 14, 2016. A copy of this QCD was filed under King County under
10 Recording Number 20161109000426 on November 09, 2016 giving Notice of Virginia Foster's
11 interest. *See Foster Declaration*, paragraphs 10, 12. The Property is legally described as:

12 THE SOUTH 17 FEET OF LOT 3 AND THE NORTH 14.7 FEET OF LOT 4 IN
13 BLOCK 6 OF NEW WILFORD ADDITION TO THE CITY OF SEATTLE, AS PER
14 PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 30, RECORDS OF KING
15 COUNTY AUDITOR;

16 TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER THE
17 SOUTH 5 ½ FEET OF THE NORTH 33 FEET OF SAID LOT 3.

18 SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF
19 WASHINGTON.

20 Tax Parcel No. 6058600395.

21 **IV. FACTS**

22 On November 23, 2005, Fosters entered into a Lease with Option to Purchase with
23 Negasi Andermariam and Negusse Obamichael through their closely held company, Merchant
Services Washington, Inc. ("MSW"). *See Foster Declaration*, paragraph 3.

In 2007, Fosters approached Debtor seeking his help in obtaining a loan to exercise the
Purchase Option in their Lease agreement. Debtor agreed, but as a condition insisted that the
Fosters enter into the Joint Venture Agreement with him. *See Foster Declaration*, paragraph 4.

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1 On January 18, 2008, Debtor and the Fosters entered into the Joint Venture Agreement.
2 See *Foster Declaration*, paragraph 5.

3 On March 3, 2011, Debtor filed a voluntary petition for bankruptcy under Chapter 11.
4 [Docket No. 207].

5 On May 12, 2012, the Court ordered confirmation of a Chapter 11 plan [Docket No.
6 207-1] ("Confirmed Plan") [Docket No. 207].

7 On July 23, 2012, the case was closed. [Docket No. 207].

8 On February 11, 2013, Fosters and Debtor amended the joint venture and debtor agreed
9 to sell his interest in the real property subject to the joint venture to Fosters for \$15,000.00.
10 See *Foster Declaration*, paragraph 6.

11 On December 08, 2015, Fosters attempted to have this Court adjudicate disputes
12 involving the Joint Venture Agreement and a subsequent amendment thereto [Docket No. 232].
13 The Court declined and entered a ruling on December 22, 2015 [Docket No. 233] directing the
14 Fosters to resolve the matter with the Debtor outside of the bankruptcy court.

15 Between December 08, 2015 and the Court's ruling above on December 22, 2015,
16 Fosters and Debtor agreed to settle their disputes related to the Joint Venture Agreement with
17 the Debtors tendering \$9,250.00 in exchange for the QCD for the Property. See *Foster
18 Declaration*, paragraph 8.

19 On December 20, 2015, Debtor executed a Special Power of Attorney appointing
20 Jeremey P. Featherston as his Attorney in Fact specifically granting Mr. Featherston the
21 authority to convey and sell the Property. See *Foster Declaration*, paragraph 9.

22 On December 21, 2015, Fosters purchased a Cashier's Check from Bank of America for
23 the \$9,250.00 payable to Mr. Featherston and Mr. Featherston caused a copy of a Quit Claim
Deed to be delivered to the Fosters. See *Foster Declaration*, paragraph 10.

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1 Between January 1, 2016 and November 2016, Fosters made attempts to secure the
2 original Quit Claim Deed without success. *See Foster Declaration*, paragraph 11.

3 On October 18, 2016, creditor Michael Yerkovich, filed a motion to reopen and convert
4 the bankruptcy from Chapter 11 to Chapter 7 [Docket No. 237] and on November 16, 2016 the
5 order was granted [Docket No. 242].

6 Between November 23, 2005 and the date of this motion, Fosters have made all
7 mortgage payments on the real property. Additionally, Fosters have paid all property taxes,
8 paid the insurance, and maintained the real property. Further, Fosters have continuously
9 possessed and occupied the real property as their residence since the November 23, 2005.

10 V. VALUE OF THE PROPERTY

11 Debtor's sworn schedules value the Property at \$311,500.00. The schedules also
12 disclosed that there were principal balances owing on the first mortgage in the amount of
13 approximately \$275,866.53 to Wells Fargo Mortgage and another \$40,000.00 owing to Bank of
14 America a HELOC.

15 VI. ARGUMENT AND AUTHORITY

16 Under 11 U.S.C. § 362 (d)(2), on request of a party in interest, a Court *shall* terminate,
17 annul, modify or condition the stay if the debtor has no equity in the Property and the Property
18 is not necessary for an effective reorganization. In the case at bar, the value of the property
19 conveyed to the Fosters, the value of encumbrances, including all liens and costs of liquidation,
20 exceed the value of the property such that there is no equity available for the estate even if the
21 transfer were avoidable. Because the confirmed Chapter 11 has been converted to Chapter 7,
22 there is now no reorganization and thus the Property cannot be argued as necessary for an
23 effective reorganization.

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1 Further, to the extent that the bankruptcy estate may have an interest or claim against
2 the Fosters or the Property, the Fosters move under 11 U.S.C. § 554(b) to compel abandonment
3 on the grounds that the Property, is burdensome and of inconsequential value to the estate.

4 **VII. CONCLUSION**

5 THEREFORE, for at least these reasons, Mel Foster and his wife Virginia Foster
6 respectfully requests this Court enter an order terminating the automatic stay pursuant to 11
7 U.S.C. § 362 and that the Creditor be allowed to immediately proceed with pursuing with any
8 and all contractual and statutory remedies necessary to enforce the Quit Claim Deed referenced
9 herein against the property located at 913 23rd Ave. S., Seattle, Washington. Similarly, the
10 Court should grant Fosters' motion to Compel Abandonment of the same property.

11 DATED: December 5, 2016

12 /s/ Mark C McClure

13 Mark C. McClure, WSBA # 24393
14 Attorney for Mel Foster and Virginia
15 Foster

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